

# House Daily Reader

**Friday, February 15, 2002**

Bills Included				
HB 1024	HB 1189	HB 1299	SB 14	SB 19
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# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0205

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1024** - 02/08/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Commerce and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the penalties for overweight vehicle violations.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 32-22-55 be amended to read as follows:

4 32-22-55. Any person who is convicted of the offense of operating a motor vehicle upon the  
5 public highways of this state with weight upon any wheel, axle, or groups of axles or upon more  
6 than one thereof greater than the maximum permitted by §§ 32-22-2 to 32-22-33, inclusive,  
7 32-22-47 and 32-22-48 shall be fined in addition to, and not in substitution for, any other  
8 penalties now provided by law for such offense in the following amounts:

9 In an amount equal to five cents per pound for each pound of such excess or combined  
10 excess weight over one thousand pounds if such excess is three thousand pounds or less.

11 In an amount equal to fifteen cents per pound for each pound of such excess or combined  
12 excess weight if such excess exceeds three thousand pounds and is four thousand pounds or less.

13 In an amount equal to twenty-two and one-half cents per pound for each pound of such  
14 excess or combined excess weight if such excess exceeds four thousand pounds and is five



1 thousand pounds or less.

2 In an amount equal to thirty-seven and one-half cents per pound for each pound of such  
3 excess or combined excess weight if such excess ~~is more than~~ exceeds five thousand pounds and  
4 is ten thousand pounds or less.

5 In an amount equal to seventy-five cents per pound for each pound of such excess or  
6 combined excess weight if such excess is more than ten thousand pounds.

7 The fine schedule in this section is assessed at a single rate according to the cents per pound  
8 penalty for the highest weight violation.

9 Section 2. That § 32-22-56 be repealed.

10 ~~— 32-22-56. In any case where the motor vehicle is absolutely overweight beyond ten thousand~~  
11 ~~pounds, the pounds by which the vehicle is so overweight shall be assessed at double the~~  
12 ~~penalties prescribed in § 32-22-55.~~

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

673H0456

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1189** - 02/04/2002

Introduced by: Representatives Wick, Abdallah, Adelstein, Brown (Richard), Duniphan, Hennies (Thomas), Holbeck, Hundstad, Jensen, McCaulley, Peterson (Bill), and Smidt and Senators Munson, Greenfield, Koetzle, Koskan, Olson (Ed), and Staggers

1 FOR AN ACT ENTITLED, An Act to establish the crime of air piracy.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 22-30 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person who obtains physical control of any aircraft registered pursuant to the provisions  
6 of chapter 50-11 by means of inflicting or threatening to inflict serious bodily harm or death on  
7 any person is guilty of air piracy.

8 A violation of this section that results in the death of any person is a Class B felony. Any  
9 other violation of this section is a Class 1 felony.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0726

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1299** - 02/08/2002

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to change the definition and venue of perjury prosecutions  
2 and to provide for the verification of certain information on certain state applications or other  
3 documents.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 22-29-1 be amended to read as follows:

6 22-29-1. Any person who, having taken an oath that he or she will testify, declare, depose,  
7 or certify truly before any competent tribunal, officer, or person, in any ~~of the cases~~ state or  
8 federal proceeding or action in which such an oath may by law be administered, intentionally and  
9 contrary to ~~such the~~ oath, states any material matter which ~~he~~ the person knows to be false, is  
10 guilty of perjury.

11 Section 2. That chapter 23A-16 be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 Perjury may be prosecuted in the circuit court for either the county where the proceeding or  
14 action is venued or where the act of perjury was committed.

15 Section 3. Any person who submits any petition, application, information, or other document



1 for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall  
2 verify, under oath, that such petition, application, or information is true and correct. However,  
3 it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or  
4 written thereon in the form following: "I declare and affirm under the penalties of perjury that  
5 this claim (petition, application, information) has been examined by me, and to the best of my  
6 knowledge and belief, is in all things true and correct." Any person who signs such statement as  
7 provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be  
8 guilty of perjury.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0231

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 14** - 02/11/2002

Introduced by: The Committee on State Affairs at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain requirements and responsibilities of the  
2 administrator of the Human Services Center.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 27A-4-3 be amended to read as follows:

5 27A-4-3. The secretary of human services shall appoint an administrator of the South Dakota  
6 Human Services Center who shall be a skilled administrator or a South Dakota licensed physician  
7 of accepted skill and ability. ~~Such person must have had experience of at least five years either~~  
8 The person shall have a degree and extensive experience in public or private institutions for the  
9 ~~mentally ill~~ administration including experience in a mental health setting and shall be of a good  
10 moral character. The administrator shall be the chief executive officer of the South Dakota  
11 Human Services Center. The administrator shall serve at the pleasure of the secretary of human  
12 services.

13 Section 2. That § 23A-27A-22 be amended to read as follows:

14 23A-27A-22. If a defendant confined under sentence of death appears to be mentally



1 incompetent to proceed, the warden having ~~him in~~ custody of the defendant shall forthwith notify  
2 the Governor, who shall appoint a commission of not less than three nor more than five  
3 disinterested duly licensed physicians, one of whom shall be the ~~superintendent~~ medical director  
4 of the Human Services Center or ~~his assistant~~ the director's designee, to examine the defendant  
5 and report to the Governor as to ~~his~~ the defendant's mental condition at the time of the  
6 examination.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0241

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 19** - 02/13/2002

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to create the crime of communicating a terroristic threat or  
2 hoax terroristic threat and to provide certain penalties therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person who intentionally communicates a threat by leaving a substance or  
5 device, thereby causing either serious public inconvenience, or the evacuation or serious  
6 disruption of a building, place of assembly, facility of public or school transport, or a school  
7 related event, is guilty of communicating a terroristic threat. For the purposes of this section, a  
8 substance or device includes, but is not limited to, an actual or apparent dangerous weapon,  
9 destructive device, dangerous chemical, biological agent, poison, or harmful radioactive  
10 substance. A violation of this section is a Class 4 felony.

11 Section 2. Any person who intentionally possesses, transports, uses, or places any hoax  
12 substance or hoax destructive device with the intent of causing anxiety, unrest, fear, or personal  
13 discomfort is guilty of a Class 5 felony. A hoax substance is any substance that would cause a  
14 person to reasonably believe that it is a dangerous chemical or biological agent, a poison, a  
15 harmful radioactive substance, or a similar substance. A hoax destructive device is any device



1 that would cause a person to reasonably believe that it is a dangerous explosive or incendiary  
2 device or a similar destructive device.

3 Section 3. The court may, after conviction or adjudication of any violation of this Act,  
4 conduct a hearing to ascertain the extent of costs incurred, damages and financial loss suffered  
5 by local, county, or state public safety agencies, and the amount of property damage caused as  
6 a result of the crime. A person found guilty of violating this Act may upon conviction, be ordered  
7 to make restitution to the local, county, or state public service agency for any cost incurred,  
8 damages and financial loss or property damage sustained as a result of the commission of the  
9 crime.

10 Section 4. That § 22-14A-22 be amended to read as follows:

11 22-14A-22. Any person who makes a false report, with intent to deceive, mislead, or  
12 otherwise misinform any person, concerning the placing or planting of any bomb, dynamite,  
13 explosive, ~~or~~ destructive device, dangerous chemical, biological agent, poison or harmful  
14 radioactive substance, is guilty of falsely reporting a ~~bomb threat~~. Falsely reporting a ~~bomb threat~~  
15 is a Class 6 felony. Any person found guilty of falsely reporting a ~~bomb threat~~ shall pay  
16 restitution for any expense incurred as a result of the crime. The person is also civilly liable for  
17 any injury to person or property from the false report and any costs related to responding to the  
18 false report. If the person making the false report prohibited by this section is a minor, the court,  
19 in addition to such other disposition as the court may impose, shall require the minor to perform  
20 at least fifty hours of public service unless tried as an adult.

21 Section 5. The provisions of this Act may not be construed to create any cause of action  
22 against any person based upon or arising out of any act or omission relating to any good faith  
23 response to a terrorist act or an attempted terrorist act.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0210

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 29** - 02/01/2002

Introduced by: The Committee on Commerce at the request of the Department of Commerce  
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain fees for special inspections and examination  
2 of certain weighing and measuring devices and certain standards and testing equipment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-21-9.1 be amended to read as follows:

5 37-21-9.1. The Division of Commercial Inspection and Regulation shall charge and collect  
6 a maximum ten dollar fee for each inspection and testing of any weight, measure, and weighing  
7 and measuring device. The fee shall be paid upon demand of the division by the person, firm, or  
8 corporation owning or operating the weight, measure, or weighing or measuring device  
9 inspected or tested. ~~However, a~~ A maximum fee of five dollars shall be charged and collected  
10 for each inspection and testing of gasoline and diesel stationary fuel pump meters. A maximum  
11 fee of fifteen dollars shall be charged and collected for each inspection and testing of gasoline  
12 and diesel high speed stationary fuel pump meters. A maximum fee of fifteen dollars shall be  
13 collected for refined fuel truck meters. If a special or emergency inspection is requested, a  
14 charge, ~~based on travel time and expense~~ not to exceed the actual cost of such inspection,



1 including costs for personnel, equipment, and mileage, shall be made and assessed against the  
2 requesting individual or device owner. ~~Such fee may not exceed twenty dollars per hour, in~~  
3 ~~addition to a fee of forty cents per mile.~~ All fees, except those for special or emergency  
4 inspection, shall be promulgated by the secretary of commerce and regulation pursuant to  
5 chapter 1-26.

6 Section 2. That § 37-21A-7 be amended to read as follows:

7 37-21A-7. A registered serviceman and a registered service agency shall submit, annually to  
8 the director, for ~~his~~ examination and certification, any standards and testing equipment that are  
9 used, or are to be used, in the performance of the service and testing functions with respect to  
10 weighing and measuring devices for which competence is registered. No registered ~~serviceman~~  
11 service person or agency may use in servicing any commercial weighing or measuring device any  
12 standards or testing equipment that have not been certified by the director. The Department of  
13 Commerce and Regulation shall charge a fee not to exceed the actual cost of such inspection,  
14 including costs for personnel, equipment, and mileage.

15 Section 3. That § 37-22-10 be amended to read as follows:

16 37-22-10. The Division of Commercial Inspection and Regulation shall charge and collect  
17 a fee for each inspection or testing of scales. The fee shall be paid upon demand of the division  
18 by the person, firm, or corporation owning or operating the scale inspected or tested. The  
19 maximum schedule of fees is as follows:

- 20 (1) Up to and including 2,000 pounds capacity -- fifteen dollars;
- 21 (2) 2,001 to 5,000 pounds capacity, inclusive -- twenty-five dollars;
- 22 (3) 5,001 to 40,000 pounds capacity, inclusive -- sixty dollars;
- 23 (4) Over 40,000 pounds capacity -- seventy-five dollars;
- 24 (5) All livestock scales -- one hundred dollars.

1        If a special or emergency inspection is requested, a charge, ~~based on travel time and expense~~  
2        not to exceed the actual cost of such inspection, including costs for personnel, equipment, and  
3        mileage, shall be made and assessed against the requesting individual or device owner. ~~The fee~~  
4        ~~may not exceed twenty dollars per hour, in addition to a fee of forty cents per mile. The fees shall~~  
5        ~~be promulgated by the secretary of commerce and regulation pursuant to chapter 1-26.~~

# State of South Dakota

## SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

490H0285

### SENATE ENGROSSED NO. **SB 58** - 01/25/2002

Introduced by: Senators Brown (Arnold), Albers, Cradduck, Daugaard, Diedrich (Larry), Everist, Greenfield, Ham, Hutmacher, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Reedy, Sutton (Dan), Symens, and Vitter and Representatives Michels, Davis, Frost, Fryslie, Glenski, Hunhoff, McCoy, Pitts, Solum, and Van Etten

1 FOR AN ACT ENTITLED, An Act to establish a nursing workforce center under the direction  
2 of the Board of Nursing and to provide funding through a fee assessed upon nursing license  
3 renewal.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The Board of Nursing shall establish a nursing workforce center. The board shall charge a  
8 fee of ten dollars upon the biennial renewal of each registered nurse and practical nurse license  
9 in addition to the license renewal fee for the funding of the nursing workforce center. Donations  
10 and bequests from persons to further the intent of the nursing workforce center or additional  
11 funds designated by the board may also be accepted and placed in the restricted fund.

12 Section 2. That chapter 36-9 be amended by adding thereto a NEW SECTION to read as  
13 follows:



1       The nursing workforce center may address issues regarding the supply, demand, and need  
2       for nurses, including issues of recruitment, retention, educational preparation, and utilization of  
3       nurses. In addition, the nursing workforce center may:

- 4       (1)    Maintain a database on the supply, demand, and need for nurses in the state;
- 5       (2)    Convene representatives of nurses, health care providers, consumers, educators,  
6              government officials, and other individuals in business and industry to review and  
7              comment on data analysis; make recommendations for strategic action; and evaluate  
8              effectiveness of actions implemented;
- 9       (3)    Provide electronic access to comprehensive information and research conducted by  
10             the nursing workforce center;
- 11       (4)    Evaluate the effectiveness of nursing education articulation and support for nursing  
12             education mobility;
- 13       (5)    Promote strategies to improve nursing workplace environments and promote nursing  
14             leadership development; and
- 15       (6)    Evaluate the effectiveness of state initiatives implemented to address nursing  
16             workforce capacities and requirements.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

816H0035

SENATE TAXATION COMMITTEE ENGROSSED NO.

**SB 83** - 02/04/2002

Introduced by: Senators Dennert and Symens and Representatives Hundstad, Begalka, Elliott,  
Frost, Lange, Sigdestad, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to reduce the capitalization rate for determining  
2 nonagricultural acreage.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-6-33.15 be amended to read as follows:

5 10-6-33.15. For the purposes of § 10-6-33.14, the agricultural income value shall be  
6 determined using capitalized actual annual cash rent. The actual annual cash rent is the actual  
7 annual cash rent, excluding the actual per acre tax on agricultural land, determined through an  
8 analysis of actual arm's length rental agreements collected within the county in the year prior to  
9 the year for which the income value is being determined. The annual cash rent shall be capitalized  
10 at ~~eight~~ six and one-half percent.





# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

527H0392

HOUSE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 86** - 02/11/2002

Introduced by: Senators Volesky and Munson and Representatives Flowers, Burg, and Valandra

1 FOR AN ACT ENTITLED, An Act to provide for the use of an ignition interlock device in a  
2 motor vehicle used by any person guilty of a second or subsequent violation of driving under  
3 the influence.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 For the purposes of this Act, the term, ignition interlock device, means breath alcohol  
8 ignition equipment designed to prevent a motor vehicle's ignition from being started by a person  
9 whose alcohol concentration exceeds a level prescribed by a court.

10 Section 2. That § 32-23-3 be amended to read as follows:

11 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is  
12 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally  
13 revoke the defendant's driving privilege for a period of not less than one year. However, upon  
14 the successful completion of a court-approved alcohol treatment program, the court may permit



1 the person to drive for the purpose of employment and may restrict the privilege by the  
2 imposition of such conditions as the court sees fit. ~~If such person is convicted of driving without~~  
3 ~~a license during that period, the person shall be sentenced to the county jail for not less than three~~  
4 ~~days, which sentence may not be suspended.~~ If the court permits the person to drive, the court  
5 may order the person to install and to use an ignition interlock device on any motor vehicle to  
6 be operated by the person during the period of revocation if the court determines that an  
7 installation and service center for the device is located within the court's definition of a  
8 reasonable distance. The court shall require the person to pay the reasonable cost of leasing,  
9 installing, and maintaining the device. The ignition interlock device shall be a device approved  
10 pursuant to section 3 of this Act.

11 Section 3. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 The Department of Commerce and Regulation shall approve any ignition interlock device to  
14 be used pursuant to this Act. The Secretary of the Department of Commerce and Regulation  
15 shall promulgate rules, pursuant to chapter 1-26, to establish performance standards for ignition  
16 interlock devices. The rules shall include standards relating to accuracy of the device, the means  
17 of installing the device, and the degree of difficulty rendering the device inoperative.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

370H0495

## SENATE ENGROSSED NO. **SB 102** - 02/01/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Olson (Ed), de Hueck, Dennert, and Symens and Representatives Garnos, Hanson (Gary), Monroe, Sigdestad, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise the calculation of state aid to education for certain  
2 consolidated school districts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-1.6 be amended to read as follows:

5 13-13-1.6. If two or more school districts consolidate, for a period of four years after  
6 consolidation, the newly formed district may opt to have its state aid calculated based on the  
7 school districts as they existed prior to consolidation. In years two to four, inclusive, after the  
8 consolidation of two or more school districts, ~~the adjusted average daily memberships and the~~  
9 ~~local efforts~~ all factors relevant to the calculation of state aid pursuant to chapter 13-13 of the  
10 former districts may be based upon a pro-rata share of the ~~adjusted average daily membership~~  
11 ~~and local effort~~ relevant factors of the newly formed district as compared to the ~~adjusted average~~  
12 ~~daily memberships and the local efforts~~ relevant factors of the former districts in the first year.

13 Any district that opts to benefit from this section shall notify the secretary of the Department of  
14 Education and Cultural Affairs of its intent to do so as part of its reorganization plan. A district



- 1 that benefits from this section may not benefit from § 13-13-10.1 or 13-13-1.5 simultaneously,
- 2 or in future years.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

267H0585

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 103** - 02/05/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Olson (Ed), Apa, Bogue, Brosz, and Koetzle and Representatives Derby, Flowers, Fryslie, Hansen (Tom), Hundstad, and Jaspers

1 FOR AN ACT ENTITLED, An Act to increase the required distance between certain persons  
2 or equipment and high voltage lines.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-32-11 be amended to read as follows:

5 49-32-11. No person may, individually or through an agent or employee, and no person as  
6 an agent or employee of another person, may perform or permit another to perform any function  
7 or activity if it is probable that during the performance of such activity any person or any tool,  
8 equipment, machinery, or material engaged in performing work connected with such activity, will  
9 move to, or be placed in, a position within ~~six~~ ten feet of any high voltage overhead electrical line  
10 or conductor. A violation of this section is a Class 2 misdemeanor.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

580H0122

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 108** - 02/01/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Sutton (Dan), Brown (Arnold), Diedrich (Elmer), Hutmacher, McIntyre, Reedy, and Symens and Representatives Garnos, Bartling, Pitts, Slaughter, and Teupel

1 FOR AN ACT ENTITLED, An Act to require the acceptance of certain uniform life insurance  
2 and annuity request forms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-15 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If a policyholder has made a request to cash surrender, to obtain maximum policy loans, or  
7 to make an Internal Revenue Code Section 1035 exchange under a life insurance or an annuity  
8 policy, the insurer shall forward to the policyholder or the policyholder's insurance producer,  
9 within thirty calendar days of receiving the request for the form, any required form to accomplish  
10 such transaction. If the insurer does not do so, the policyholder may utilize a uniform life  
11 insurance or annuity form for such purpose. The director shall adopt the uniform life insurance  
12 and annuity forms by rules promulgated pursuant to chapter 1-26. If the insurer has failed to  
13 submit its form to the policyholder or the policyholder's insurance producer within the time



- 1 period required by this section, the insurer shall accept the uniform form as adopted by the
- 2 director and may not require the use of any additional form.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

527H0262

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**SB 110 - 02/13/2002**

Introduced by: Senators Munson, Albers, Diedrich (Elmer), Hagen, Olson (Ed), and Vitter  
and Representatives Broderick, Abdallah, Brown (Richard), Flowers, Pummel,  
and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of  
2 vehicle dealers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-6B-49.1 be amended to read as follows:

5 32-6B-49.1. No franchisor may require a franchisee to agree to the inclusion of a franchise  
6 agreement may include any term or condition in a franchise, ~~or in any lease or agreement~~  
7 ~~ancillary or collateral to a franchise as a condition to the offer, grant or renewal of such~~  
8 ~~franchise, lease or agreement~~, that:

9 (1) Requires the franchisee to waive trial by jury involving the franchisor;

10 (2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect  
11 to the franchise, lease or agreement shall or may not be submitted for resolution or  
12 otherwise prevents a franchisee from bringing an action in a particular forum  
13 otherwise available under the law;

14 (3) Requires that disputes between the franchisor and franchisee be submitted to





arbitration or to any other binding alternate dispute resolution procedure. However, any franchise, lease or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the franchisor and franchisee voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises; ~~or~~

(4) Requires a franchisee to pay the attorney fees of a franchisor;

(5) Prohibits the holder of an existing franchise from being dualled with another franchisor's line that does not substantially affect the current franchisor or community;

(6) Prohibits the holder of an existing franchise from moving to another facility within the franchisee's community that is equal to or superior to the franchisee's former facility;

or

(7) Prohibits the holder of an existing franchise from making improvements to the franchisee's current facility within the franchisee's community.

An existing franchisee shall give the franchisor prior written notice of the proposed dual arrangement, relocation, or improvement described in subdivisions (5), (6), and (7). The notice shall contain sufficient information for the franchisor to evaluate the proposal. Within sixty days of receiving said notice, the franchisor shall send a letter to the franchisee either approving or disapproving the proposal. If the franchisor does not notify the franchisee of its approval or denial of the dual arrangement, relocation, or improvement within the sixty-day period, the franchisee's proposal shall be deemed to have been approved. No franchisor may unreasonably withhold its approval. Denial of a proposed dual arrangement or facility improvement shall be supported by credible evidence that it will substantially affect in an adverse way the current franchisor or community. Denial of a proposed relocation shall be supported by credible evidence that the new location is not at least equal to the franchisee's former facility.

1 This section does not apply to agreements pertaining to the lease or sale of real property.

2 Section 2. That § 32-6B-76 be amended to read as follows:

3 32-6B-76. Approval by a manufacturer or franchisor of an application filed under  
4 §§ 32-6B-73 to 32-6B-78, inclusive, may not be unreasonably withheld. It is unreasonable for  
5 a manufacturer or franchisor to reject a prospective transferee ~~who is of good moral character~~  
6 ~~and~~ who otherwise meets the manufacturer's or franchisor's written, reasonable, and uniformly  
7 applied standards or qualifications, if any, relating to the prospective transferee's business  
8 experience and financial qualifications.

9 Section 3. That § 32-6B-79 be amended to read as follows:

10 32-6B-79. In §§ 32-6B-79 to 32-6B-83, inclusive, the term, manufacturer, includes a  
11 representative or a person or entity who is ~~affiliated with a manufacturer or representative, or~~  
12 ~~who~~, directly or indirectly ~~through an intermediary~~, is controlled by, or is under common control  
13 with, the manufacturer. For purposes of this section, a person or entity is controlled by a  
14 manufacturer if the manufacturer has the authority directly or indirectly, by law or by agreement  
15 of the parties, to direct or influence the management and policies of the person or entity.

16 Section 4. That § 32-6B-84 be amended to read as follows:

17 32-6B-84. Notwithstanding the terms of any franchise agreements, the manufacturer or  
18 franchisor may exercise a right of first refusal to acquire the motor vehicle dealer's assets or  
19 ownership if all of the following conditions are met:

- 20 (1) In order to exercise the right of first refusal, the manufacturer or franchisor shall  
21 notify the motor vehicle dealer in writing within sixty days of its receipt of the  
22 completed proposal for the sale or transfer and all related agreements;
- 23 (2) The exercise of the right of first refusal will result in the dealer receiving the same or  
24 greater consideration as the dealer has contracted to receive in connection with the

1 proposed change of ownership or transfer;

2 (3) The proposed sale or transfer of the dealership's assets does not involve the transfer  
3 or sale to a member or members of the family of one or more dealers, or to a qualified  
4 manager with at least two years management experience at the dealership of one or  
5 more of these dealers, or to a partnership or corporation controlled by such persons;

6 (4) The manufacturer or franchisor agrees to pay the reasonable expenses, including  
7 attorney fees which do not exceed the usual, customary, and reasonable fees charged  
8 for similar work done for other clients, incurred by the proposed owner or transferee  
9 prior to the manufacturer's or franchisor's exercise of its right of first refusal in  
10 negotiating and implementing the contract for the proposed sale or transfer of the  
11 dealership or dealership assets. Such expenses and attorney fees shall be paid to the  
12 proposed new owner or transferee at the time of closing of the sale or transfer for  
13 which the manufacturer or franchisor exercised its right of first refusal. No payment  
14 of such expenses and attorney fees is required if the new owner or transferee has not  
15 submitted an accounting of those expenses within thirty days of the dealer's receipt  
16 of the manufacturer's or franchisor's written request for such an accounting. A  
17 manufacturer or franchisor may request such accounting before exercising a right of  
18 first refusal; and

19 (5) The dealer does not have any liability to any person as to any disclosed term,  
20 condition, or issue as a result of a manufacturer or franchisor exercising a right of first  
21 refusal.

22 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A franchisor may reasonably and periodically audit a franchisee to determine the validity of

1 paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments  
2 may apply only to the two-year period immediately preceding the date on which the dealer was  
3 notified of an impending audit. The limitations of this section do not apply if the franchisor can  
4 prove fraud.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

643H0531

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 118** - 01/28/2002

Introduced by: Senators McCracken, Diedrich (Elmer), Ham, and McIntyre and  
Representatives Peterson (Bill), Frost, Glenski, and Van Etten

1 FOR AN ACT ENTITLED, An Act to prohibit smoking in public places.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-36-2 be amended to read as follows:

4 22-36-2. No person may smoke tobacco or carry any lighted tobacco product in the  
5 following places:

6 ~~—(1)—Any hospital or medical or dental clinic;~~

7 ~~—(2)—Any nursing facility;~~

8 ~~—(3)—Any public library, museum, indoor theater, or concert hall;~~

9 ~~—(4)—Any elementary or secondary school building;~~

10 ~~—(5)—Any public conveyance;~~

11 ~~—(6)—Any jury room;~~

12 ~~—(7)—Any elevator;~~

13 ~~—(8)—Any registered or unregistered day care program, day care center, day care~~  
14 ~~cooperative, or family day care home governed by chapter 26-6 during the time in~~



1       ~~which children who are not family members of the day care provider are receiving~~  
2       ~~care.~~

3       ~~— This section does not prohibit the smoking of tobacco or tobacco products in the places~~  
4       ~~named in this section, if the smoking is confined to areas designated as smoking areas~~ any public  
5       place or place of employment. This section does not apply to any sleeping room in a lodging  
6       establishment as defined in § 34-18-1, to any on-sale licensee pursuant to chapter 35-4, to any  
7       video lottery licensed establishment pursuant to chapter 42-7A, to any licensee pursuant to  
8       chapter 42-7B, or to any tobacco or packaged liquor store if the store is primarily used for the  
9       sale of tobacco or alcoholic beverages, or both, and the sale of other products is merely  
10      incidental.

11       A violation of this section is a petty offense.

12       Section 2. For the purposes of this Act, a public place is any enclosed indoor area to which  
13       the public is invited or to which the public is permitted, including any hospital or medical or  
14       dental clinic; any nursing facility; any public library, museum, theater, or concert hall; any  
15       elementary or secondary school building; any public conveyance; any jury room; any elevator;  
16       any reception area; any restaurant; any retail service establishment; any retail store; and any  
17       registered or unregistered day care program, day care center, day care cooperative, or family day  
18       care home governed by chapter 26-6 during the time in which children who are not family  
19       members of the day care provider are receiving care. A private residence is not a public place  
20       unless it is used for day care.

21       Section 3. For the purposes of this Act, a place of employment is any enclosed indoor area  
22       under the control of a public or private employer, including work areas, employee lounges and  
23       restrooms, conference and class rooms, employee cafeterias, and hallways. A private residence  
24       is not a place of employment unless it is used for day care.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

439H0615

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 141** - 02/13/2002

Introduced by: Senator Whiting and Representative Brown (Jarvis)

1 FOR AN ACT ENTITLED, An Act to authorize total return unitrusts.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Disinterested person," any person who is not a related or subordinate party, as  
5 defined in section 672(c) of the Internal Revenue Code (26 U.S.C. section 1, et seq.),  
6 with respect to the person then acting as trustee of the trust and excludes the trustor  
7 of the trust and any interested trustee;

8 (2) "Income trust," any trust, created by either an inter vivos or a testamentary  
9 instrument, which directs or permits the trustee to distribute the net income of the  
10 trust to one or more persons, either in fixed proportions or in amounts or proportions  
11 determined by the trustee. However, no trust that otherwise is an income trust may  
12 qualify pursuant to this subdivision, if it is subject to taxation under I.R.C. section  
13 2001 or section 2501, until the expiration of the period for filing the return therefor  
14 (including extensions);

15 (3) "Interested distributee," any person to whom distributions of income or principal can



1 currently be made who has the power to remove the existing trustee and designate as  
2 successor a person who may be a related or subordinate party, as defined in I.R.C.  
3 section 672(c), with respect to such distributee;

4 (4) "Interested trustee," (i) any individual trustee to whom the net income or principal of  
5 the trust can currently be distributed or would be distributed if the trust were then to  
6 terminate and be distributed, or (ii) any trustee who may be removed and replaced by  
7 an interested distributee, or (iii) any individual trustee whose legal obligation to  
8 support a beneficiary may be satisfied by distributions of income and principal of the  
9 trust, or (iv) any of the above;

10 (5) "Total return unitrust," any income trust which has been converted under and meets  
11 the provisions of this Act;

12 (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted  
13 otherwise, whether acting in their discretion or on the direction of one or more  
14 persons acting in a fiduciary capacity;

15 (7) "Trustor," any individual who created an inter vivos or a testamentary trust;

16 (8) "Unitrust amount," an amount computed as a percentage of the fair market value of  
17 the trust;

18 (9) "Current valuation year," the accounting period of the trust for which the unitrust  
19 amount is being determined;

20 (10) "Prior valuation year," each of the two accounting periods of the trust immediately  
21 preceding the current valuation year; and

22 (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.).

23 Section 2. A trustee, other than an interested trustee, or, if two or more persons are acting  
24 as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter



1 "trustee"), may, in its sole discretion and without the approval of any court, (i) convert an income  
2 trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii)  
3 change the percentage used to calculate the unitrust amount and the method used to determine  
4 the fair market value of the trust if:

5 (1) The trustee adopts a written policy for the trust providing (i) in the case of a trust  
6 being administered as an income trust, that future distributions from the trust will be  
7 unitrust amounts rather than net income, (ii) in the case of a trust being administered  
8 as a total return unitrust, that future distributions from the trust will be net income  
9 rather than unitrust amounts, or (iii) that the percentage used to calculate the unitrust  
10 amount or the method used to determine the fair market value of the trust will be  
11 changed as stated in the policy;

12 (2) The trustee sends written notice of its intention to take such action, along with copies  
13 of such written policy and this chapter, to (i) the trustor, if living, (ii) all living persons  
14 who are currently receiving or eligible to receive distributions of income of the trust,  
15 (iii) all living persons who would receive principal of the trust if the trust were to  
16 terminate at the time of the giving of such notice (without regard to the exercise of  
17 any power of appointment) or, if the trust does not provide for its termination, all  
18 living persons who would receive or be eligible to receive distributions of income or  
19 principal of the trust if the persons identified in subclause (ii) of this subdivision were  
20 deceased, and (iv) all persons acting as adviser or protector of the trust;

21 (3) At least one person receiving notice under each of subclauses (ii) and (iii) of  
22 subdivision (2) is, to the best information and belief of the trustee, legally competent;  
23 and

24 (4) No person receiving such notice objects, by written instrument delivered to the

1 trustee, to the proposed action of the trustee within sixty days of receipt of such  
2 notice.

3 Section 3. If there is no trustee of the trust other than an interested trustee, the interested  
4 trustee or, if two or more persons are acting as trustee and are interested trustees, a majority of  
5 such interested trustees, may, in its sole discretion and without the approval of any court, take  
6 such action as provided in section 2 of this Act so long as the trustee appoints a disinterested  
7 person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee (i)  
8 the percentage to be used to calculate the unitrust amount, (ii) the method to be used in  
9 determining the fair market value of the trust, and (iii) which assets, if any, are to be excluded  
10 in determining the unitrust amount; and complies with all of the provisions of subdivisions (1)  
11 to (4), inclusive, of section 2 of this Act.

12 Section 4. If any trustee desires to (i) convert an income trust to a total return unitrust, (ii)  
13 reconvert a total return unitrust to an income trust, or (iii) change the percentage used to  
14 calculate the unitrust amount and the method used to determine the fair market value of the trust  
15 but does not have the ability to or elects not to do it under the provisions of sections 2 and 3 of  
16 this Act, or in the event the trustee receives a written objection within the applicable period, the  
17 trustee may petition the court for such order as the trustee deems appropriate. In the event,  
18 however, there is only one trustee of such trust and such trustee is an interested trustee or in the  
19 event there are two or more trustees of such trust and a majority of them are interested trustees,  
20 the court, in its own discretion or on the petition of such trustee or trustees or any person  
21 interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity,  
22 shall present such information to the court as shall be necessary to enable the court to make its  
23 determination.

24 Section 5. The fair market value of the trust shall be determined at least annually, using such

1 valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for  
2 which a fair market value cannot be readily ascertained shall be valued using such valuation  
3 methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation,  
4 if all income received with respect to such assets is distributed to the extent distributable in  
5 accordance with the terms of the governing instrument.

6 Section 6. The unitrust amount shall be determined as follows:

7 (1) For the first three accounting periods of the trust, the unitrust amount for a current  
8 valuation year of the trust shall be three percent, or such higher percentage specified  
9 by the terms of the governing instrument or by the election of the trustee, the  
10 disinterested person, or the court, of the net fair market value of the assets held in the  
11 trust on the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a  
13 current valuation year of the trust shall be three percent, or such higher percentage  
14 specified by the terms of the governing instrument or by the election of the trustee,  
15 the disinterested person, or the court, of the average of the net fair market value of  
16 the assets held in the trust on the first business day of the current valuation year and  
17 the net fair market value of the assets held in the trust on the first business day of each  
18 prior valuation year;

19 (3) The percentage that may be elected in determining the unitrust amount shall be a  
20 reasonable current return from the trust, taking into account the intentions of the  
21 trustor of the trust as expressed in the governing instrument, the needs of the  
22 beneficiaries, general economic conditions, projected current earnings and  
23 appreciation for the trust, and projected inflation and its impact on the trust.  
24 However, if such percentage is three percent or greater, or if no percentage is

1 specified, then that percentage shall be three percent;

2 (4) The unitrust amount for the current valuation year shall be proportionately reduced  
3 for any distributions, in whole or in part, other than distributions of the unitrust  
4 amount, and for any payments of expenses, including debts, disbursements and taxes,  
5 from the trust within a current valuation year that the trustee determines to be  
6 material and substantial, and shall be proportionately increased for the receipt, other  
7 than a receipt that represents a return on investment, of any additional property into  
8 the trust within a current valuation year;

9 (5) In the case of a short accounting period, the trustee shall prorate the unitrust amount  
10 on a daily basis;

11 (6) If the net fair market value of an asset held in the trust has been incorrectly  
12 determined either in a current valuation year or in a prior valuation year, the unitrust  
13 amount shall be increased in the case of an undervaluation, or be decreased in the case  
14 of an overvaluation, by an amount equal to the difference between the unitrust amount  
15 determined based on the correct valuation of the asset and the unitrust amount  
16 originally determined;

17 (7) In determining the net fair market value of the assets held in trust, the determination  
18 may not include the value of any residential property or any tangible personal property  
19 that, as of the first business day of the current valuation year, one or more income  
20 beneficiaries of the trust have or had the right to occupy, or have or had the right to  
21 possess or control, other than in a capacity as trustee, and instead the right of  
22 occupancy or the right of possession or control shall be deemed to be the unitrust  
23 amount with respect to the residential property or the tangible personal property; or  
24 any asset specifically given to a beneficiary under the terms of the trust and the return

1           on investment on that asset, which return on investment shall be distributed to the  
2           beneficiary.

3           Section 7. The unitrust amount may not be less than the net income of the trust, determined  
4           without regard to the provisions of section 8 of this Act, for (i) a trust for which a marital  
5           deduction has been taken for federal tax purposes under I.R.C. section 2056 or 2523 (during the  
6           lifetime of the spouse for whom the trust was created), or (ii) a trust to which the generation-  
7           skipping transfer tax due under I.R.C. section 2601 does not apply by reason of any effective  
8           date or transition rule.

9           Section 8. Following the conversion of an income trust to a total return unitrust, the trustee:

10          (1)    Shall treat the unitrust amount as if it were net income of the trust for purposes of  
11                determining the amount available, from time to time, for distributions from the trust;  
12                and

13          (2)    May allocate to trust income for each taxable year of the trust (or portions thereof)  
14                (i) net short-term capital gain described in I.R.C. section 1222(5) for such year (or  
15                portion thereof) but only to the extent that the amounts so allocated together with all  
16                other amounts allocate to trust income for such year (or portion thereof) does not  
17                exceed the unitrust amount for such year (or portion thereof); and (ii) net long-term  
18                capital gain described in I.R.C. section 1222(7) for such year (or portion thereof) but  
19                only to the extent that the amount so allocated together with all other amounts,  
20                including amounts described in clause (i) above, allocated to trust income for such  
21                year (or portion thereof) does not exceed the unitrust amount for such year (or  
22                portion thereof).

23          Section 9. In administering a total return unitrust, the trustee may, in its sole discretion but  
24          subject to the provisions of the governing instrument, determine:

- 1       (1)    The effective date of the conversion;
- 2       (2)    The timing of distributions (including provisions for prorating a distributions for a  
3               short year in which a beneficiary' right to payments commences or ceases);
- 4       (3)    Whether distributions are to be made in cash or in kind or partly in cash and partly in  
5               kind;
- 6       (4)    If the trust is reconverted to an income trust, the effective date of such reconversion;  
7               and
- 8       (5)    Such other administrative issues as may be necessary or appropriate to carry out the  
9               purposes of this Act.

10       Section 10. Conversion to a total return unitrust under the provisions of this Act does not  
11   affect any other provisions of the governing instrument, if any, regarding distributions of  
12   principal.

13       Section 11. In the case of a trust for which a marital deduction has been taken for federal tax  
14   purpose under I.R.C. section 2056 or 2523, the spouse otherwise entitled to receive the net  
15   income of the trust has the right, by written instrument delivered to the trustee, to compel the  
16   reconversion during his or her lifetime of the trust from a total return unitrust to an income trust,  
17   notwithstanding anything in this Act to the contrary.

18       Section 12. This Act shall be construed as pertaining to the administration of a trust and shall  
19   be available to any trust that is administered in South Dakota under South Dakota law unless (i)  
20   the governing instrument reflects an intention that the current beneficiary or beneficiaries are to  
21   receive an amount other than a reasonable current return from the trust, ii) the trust is a trust  
22   described in I.R.C. section 170(f)(2)(B), 6664(d), 1361(d), 2702(a)(3), or 2702(b), (iii) one or  
23   more persons to whom the trustee could distribute income have a power of withdrawal over the  
24   trust that is not subject to an ascertainable standard under I.R.C. section 2041 or 2514 or that

1 can be exercised to discharge a duty of support he or she possesses, or (iv) the governing  
2 instrument expressly prohibits use of this Act by specific reference to the chapter. A provision  
3 in the governing instrument that "The provisions of this Act, or any corresponding provision of  
4 future law, may not be used in the administration of this trust" or similar words reflecting such  
5 intent are sufficient to preclude use of this Act.

6 Section 13. Any trustee or disinterested person who in good faith takes or fails to take any  
7 action under this Act is not liable to any person affected by such action or inaction, regardless  
8 of whether such person received written notice as provided in this Act and regardless of whether  
9 such person was under a legal disability at the time of the delivery of such notice. Such person's  
10 exclusive remedy shall be to obtain an order of the court directing the trustee to convert an  
11 income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust  
12 or to change the percentage used to calculate the unitrust amount.

13 Section 14. Nothing in this Act is intended to create or imply a duty to take any action under  
14 this Act, and no trustee is liable for not considering whether to take any action or for choosing  
15 not to take any such action.

16 Section 15. This Act is effective upon enactment and is available to trusts in existence at the  
17 date of enactment or created thereafter.

# State of South Dakota

## SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

556H0689

### SENATE ENGROSSED NO. **SB 156** - 02/07/2002

**This bill has been extensively amended (hghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Symens, Albers, Apa, Bogue, Brosz, Brown (Arnold), Cradduck, Daugaard, Dennert, Diedrich (Larry), Diedrich (Elmer), Duxbury, Everist, Greenfield, Hagen, Ham, Hutmacher, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Vitter, Volesky, and Whiting and Representatives Duenwald, Bartling, Brown (Richard), Burg, Duniphan, Flowers, Frost, Fryslie, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Heineman, Holbeck, Hundstad, Jaspers, Juhnke, Klaudt, Konold, Lintz, Nachtigal, Nesselhuf, Olson (Mel), Pederson (Gordon), Peterson (Bill), Peterson (Jim), Rhoden, Sigdestad, Teupel, Van Gerpen, Van Norman, and Wick

1 FOR AN ACT ENTITLED, An Act to provide for the revision of the South Dakota Family  
2 Farm Act of 1974 to conform with a proposed amendment to the South Dakota Constitution  
3 regulating corporate farming in South Dakota.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 47-9A-1 be amended to read as follows:

6 47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the  
7 family farm to the economic and moral stability of the state, and the Legislature recognizes that  
8 the existence of the independent family farm is ~~threatened by conglomerates~~ important to the  
9 economic viability of rural South Dakota and is jeopardized by downward vertical integration  
10 in farming. Therefore, it is hereby declared to be the public policy of this state, and shall be the





1 ~~provision~~ purpose of this chapter, that, notwithstanding the provisions of § 47-2-3, no foreign  
2 or domestic ~~corporation~~ limited liability entity, except as provided herein, shall be formed or  
3 licensed under the ~~South Dakota Business Corporation Act~~ laws of this state for the purpose of  
4 owning, leasing, holding, or otherwise controlling agricultural land ~~to be used in the business of~~  
5 agriculture or owning livestock.

6 ~~—It is further declared that no foreign or domestic limited liability company, except as provided~~  
7 ~~herein, shall be formed or licensed under the South Dakota Limited Liability Company Act for~~  
8 ~~the purpose of owning, leasing, holding, or otherwise controlling agricultural land to be used in~~  
9 ~~the business of agriculture.~~

10 Section 2. That § 47-9A-2 be amended to read as follows:

11 47-9A-2. Terms used in this chapter, ~~unless the context otherwise plainly requires~~, mean:

- 12 (1) "Agricultural land," land used for farming, ranching, livestock feeding, or grazing and  
13 which is not zoned for a nonagricultural use;
- 14 (2) ~~"Corporation" or any derivation of "corporation, both corporations under the South~~  
15 ~~Dakota Business Corporation Act and limited liability companies under the South~~  
16 ~~Dakota Limited Liability Company Act"~~ "Limited liability entity," any legal entity  
17 which limits the individual liability of any investor or owner, including corporations,  
18 cooperatives, limited liability companies, limited liability partnerships, and limited  
19 partnerships;
- 20 (3) "Family farm," ~~an unincorporated~~ any farming unit owned by one or more natural  
21 persons residing on the farm or who own the land or livestock and where at least one  
22 owner is actively engaging in farming engaged in day-to-day implementation of the  
23 management of the farming operation;
- 24 (4) "Farming," the cultivation of land for the production of agricultural or horticultural

1        ~~crops; livestock, or livestock products; poultry or poultry products; milk or dairy~~  
2        ~~products; or fruit or other horticultural products. It shall not include the production~~  
3        ~~of timber or forest products; nor shall it include a contract whereby a processor or~~  
4        ~~distributor of farm products or supplies provides spraying, harvesting or other farm~~  
5        ~~services; or the ownership of livestock; and~~

6        (5)    ~~"Shareholders" or "stockholders," include the members of a limited liability company;~~  
7        ~~and~~

8        ~~(6)    "Shares" or "stock," include membership interests in a limited liability company~~  
9        ~~"Livestock," cattle, sheep, horses, pigs, poultry, and any other animal, if the animal~~  
10       is raised or fed for profit and intended for end-use as a food product.

11       Section 3. That § 47-9A-3 be amended to read as follows:

12       47-9A-3. Except as provided ~~herein~~ in this chapter, no foreign or domestic ~~corporation~~  
13       limited liability entity may own livestock for more than two weeks prior to delivery for slaughter  
14       or engage in farming; nor may any foreign or domestic corporation limited liability entity, directly  
15       or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial, or  
16       otherwise, in any title to ~~real estate used for farming or capable of being used for farming~~  
17       agricultural land in this state.

18       Section 4. That § 47-9A-3.1 be repealed.

19       ~~47-9A-3.1. The restrictions of § 47-9A-3 do not apply to the cultivation of edible fruits,~~  
20       ~~vegetables, or mushrooms if such cultivation occurs within a greenhouse or other enclosed or~~  
21       ~~semi-enclosed structure.~~

22       Section 5. That § 47-9A-4 be repealed.

23       ~~47-9A-4. Any national or state chartered bank, or trust company, authorized to do business~~  
24       ~~in this state shall be exempt from the provisions of this chapter; provided, however, that no~~

~~national or state bank or trust company shall purchase agricultural lands in South Dakota through a pooled investment fund formed from assets from retirement, pension, profit sharing, stock bonds, or other trusts.~~

Section 6. That § 47-9A-5 be amended to read as follows:

47-9A-5. The restrictions of ~~§ 47-9A-3 shall~~ §§ 47-9A-1 and 47-9A-3 do not apply to agricultural land ~~and land capable of being used for farming or livestock~~ which:

- (1) ~~Was owned by a corporation as of July 1, 1974, including the normal expansion of such ownership at a rate not to exceed twenty percent, measured in acres, in any five-year period~~ Is owned by an entity in which all investors are natural persons, and one of the investors is actively engaged in the day-to-day implementation of the management of the farm land or farm operation; or
- (2) ~~Is leased by a corporation in an amount, measured in acres, not to exceed the acreage under lease to such corporation as of July 1, 1974, and the additional acreage required for normal expansion at a rate not to exceed twenty percent in any five-year period; and the additional acreage necessary to meet the requirements of pollution control regulations~~ Is owned by an entity in which a majority of the voting rights are owned by qualified persons who own agricultural land or an interest in a farming operation. For purposes of this exception a qualified person may be either a natural person or an entity which meets the requirements of exception number one of this section; or
- (3) Is owned by an entity which engages in farming primarily for scientific, medical, research, or experimental purposes; or
- (4) Is owned by an entity which owns only mineral rights, a right-of-way, a utility easement, a transportation easement, a water line easement, a drainage easement, a telecommunication easement, or any less than fee simple interest in land which is held

1 primarily for a nonfarming purpose or use; or

2 (5) Is owned by an entity which purchases any interest in agricultural land primarily for  
3 a nonfarming purpose, if the nonfarming purpose is applied to the land within five  
4 years of the date of purchase. This exemption applies as long as the land is used for  
5 the nonfarming purpose, and if any farming operations on such land are merely  
6 incidental to the primary use, and are conducted by contract or lease to a person or  
7 entity who is not otherwise prohibited from farming or owning agricultural land in this  
8 state; or

9 (6) Is owned by an entity which is a lender, which acquires land or livestock as collateral  
10 on a debt, if the lender disposes of the land within five years and livestock within one  
11 year, of acquisition; or

12 (7) Is owned by a trustee holding lands or livestock for the benefit of persons or entities  
13 who are not prohibited from farming or owning agricultural land in South Dakota; or

14 (8) Was owned by an entity or person with a vested property interest in agricultural land  
15 or farming on June 1, 2002, or who lawfully engaged in farming or owned agricultural  
16 land in this state on November 1, 1998. However, no expansion is allowed under this  
17 exemption beyond the size and extent of the farming operation on June 1, 2002.

18 Section 7. That § 47-9A-6 be repealed.

19 ~~—47-9A-6. The restrictions provided in § 47-9A-3 shall not apply to a bona fide encumbrance~~  
20 ~~taken for purposes of security.~~

21 Section 8. That § 47-9A-7 be repealed.

22 ~~—47-9A-7. The restrictions of § 47-9A-3 shall not apply to agricultural lands acquired by a~~  
23 ~~corporation by process of law in the collection of debts; or by any procedure for the enforcement~~  
24 ~~of a lien or claim thereon, whether created by mortgage or otherwise; provided, however, that~~

1 ~~all lands so acquired be disposed of within ten years after acquiring the title thereto, and further~~  
2 ~~provided that the land so acquired shall not be used for farming during the ten-year period except~~  
3 ~~under a lease to a family farm unit, a family farm corporation, or an authorized farm corporation.~~  
4 ~~The aforementioned ten-year limitation period shall be deemed a covenant running with the title~~  
5 ~~to the land against any corporate grantee or assignee or the successor of such corporation.~~

6 Section 9. That § 47-9A-8 be repealed.

7 ~~—47-9A-8. The restrictions of § 47-9A-3 shall not apply to gifts of agricultural lands, either~~  
8 ~~by grant or devise, to any corporation organized under chapter 47-22.~~

9 Section 10. That § 47-9A-9 be repealed.

10 ~~—47-9A-9. The restrictions of § 47-9A-3 shall not apply to a farm operated for research or~~  
11 ~~experimental purposes; provided, that any commercial sales from such farm shall be incidental~~  
12 ~~to the research or experimental objectives of the corporation.~~

13 Section 11. That § 47-9A-10 be repealed.

14 ~~—47-9A-10. The restrictions of § 47-9A-3 shall not apply to agricultural land operated by a~~  
15 ~~corporation for the purpose of raising breeding stock for resale to farmers or operated for the~~  
16 ~~purpose of growing seed, nursery plants, or sod.~~

17 Section 12. That § 47-9A-11 be repealed.

18 ~~—47-9A-11. The restrictions of § 47-9A-3 shall not apply to agricultural lands acquired by a~~  
19 ~~corporation solely for the purpose of feeding livestock.~~

20 Section 13. That § 47-9A-12 be amended to read as follows:

21 47-9A-12. The restrictions of § 47-9A-3 ~~shall~~ do not apply to agricultural land acquired by  
22 a corporation other than a family farm corporation or authorized farm corporation for immediate  
23 or potential use in nonfarming purposes. A corporation may hold such agricultural land in such  
24 acreage as may be necessary to its nonfarm business operation; provided, however, that pending

1 ~~the development of agricultural land for nonfarm purposes, such land may not be used for~~  
2 ~~farming except under lease to a family farm unit, a family farm corporation or an authorized farm~~  
3 ~~corporation, or except when controlled through ownership, options, leaseholds or other~~  
4 ~~agreements by a corporation which has entered into an agreement with the United States of~~  
5 ~~America pursuant to the New Community Act of 1968, (Title IV of the Housing and Urban~~  
6 ~~Development Act of 1968, 42 U.S.C. 3901-3914), as amended, or a subsidiary or assign of such~~  
7 ~~a corporation.~~

8 Section 14. That § 47-9A-13 be repealed.

9 ~~—47-9A-13. The restrictions of § 47-9A-3 shall not apply to a family farm corporation or an~~  
10 ~~authorized farm corporation.~~

11 Section 15. That § 47-9A-13.1 be repealed.

12 ~~—47-9A-13.1. No corporation, except a family farm corporation, may own or operate any hog~~  
13 ~~confinement facility. For the purposes of this chapter a hog confinement facility is any real estate~~  
14 ~~used for the breeding, farrowing, and raising of swine. This restriction shall not apply to the~~  
15 ~~acquisition of a hog confinement facility by a corporation by process of law in the collection of~~  
16 ~~debts, or by any other procedure for the enforcement of a lien or claim thereon, as provided in~~  
17 ~~§ 47-9A-7.~~

18 Section 16. That § 47-9A-14 be repealed.

19 ~~—47-9A-14. As used in this chapter, unless the context otherwise plainly requires, "family farm~~  
20 ~~corporation" means a corporation founded for the purpose of farming and the ownership of~~  
21 ~~agricultural land in which the majority of the voting stock is held by the majority of the~~  
22 ~~stockholders who are members of a family related to each other within the third degree of~~  
23 ~~kindred, and at least one of whose stockholders is a person who is residing on or actively~~  
24 ~~operating the farm or who has resided on or has actively operated the farm, and none of whose~~

1 ~~stockholders are corporations, or a corporation founded for the purpose of farming and the~~  
2 ~~ownership of agricultural land in which a majority of the voting stock is held by resident~~  
3 ~~stockholders who are family farmers and are actively engaged in farming as their primary~~  
4 ~~economic activity. However, a family farm corporation does not cease to qualify as such~~  
5 ~~hereunder by reason of any devise or bequest of shares of voting stock or by reason of any gift~~  
6 ~~of shares of voting stock to any person who is entitled to inherit from the donor if the donor~~  
7 ~~were to die intestate.~~

8 Section 17. That § 47-9A-15 be repealed.

9 ~~—47-9A-15. As used in this chapter, unless the context otherwise plainly requires, "authorized~~  
10 ~~farm corporation" means a corporation whose shareholders do not exceed ten in number, whose~~  
11 ~~shareholders are all natural persons or estates, whose shares are all of one class, and whose~~  
12 ~~revenues from rent, royalties, dividends, interest, and annuities do not exceed twenty percent of~~  
13 ~~its gross receipts.~~

14 Section 18. That § 47-9A-16 be amended to read as follows:

15 47-9A-16. Every ~~corporation~~ limited liability entity engaged in farming or proposing to  
16 commence farming in this state shall file with the secretary of state a report containing:

- 17 (1) The name of the ~~corporation~~ entity and its place of ~~incorporation~~ formation;
- 18 (2) The address of the registered office of the ~~corporation~~ entity in this state, the name  
19 and address of its registered agent in this state and, in the case of a foreign  
20 ~~corporation~~ entity, the address of its principal office in its place of ~~incorporation~~  
21 formation;
- 22 (3) The acreage and location listed by section, township, and county of each lot or parcel  
23 of land in this state owned ~~or leased~~ by the ~~corporation~~ entity and used for the  
24 growing of crops or the keeping or feeding of ~~poultry or~~ livestock; and

(4) The names and addresses of ~~the~~ any officers and the members of the board of directors of the ~~corporation~~ entity.

Section 19. That § 47-9A-17 be repealed.

~~47-9A-17. The report of a corporation seeking to qualify hereunder as a family farm corporation or an authorized farm corporation shall contain, in addition:~~

~~(1) The number of shares owned by persons residing on the farm or actively engaged in farming, or their relatives within the third degree of kindred;~~

~~(2) The name, address, and number of shares owned by each shareholder; and~~

~~(3) A statement as to percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities.~~

Section 20. That § 47-9A-18 be amended to read as follows:

47-9A-18. No ~~corporation~~ limited liability entity may commence farming in this state until the secretary of state has inspected the report required by § 47-9A-16 and certified that its proposed operations comply with the provisions of §§ ~~47-9A-16 and 47-9A-17~~ § 47-9A-16.

Section 21. That § 47-9A-19 be repealed.

~~47-9A-19. Every corporation engaged in farming in this state shall, prior to the first day of the second month following the anniversary month of the corporation of each year, file with the secretary of state a report containing the information required in this chapter, based on its operations in the preceding calendar year and its status at the end of such year.~~

Section 22. That § 47-9A-20 be amended to read as follows:

47-9A-20. Any ~~corporation~~ limited liability entity which fails to file any report required by this chapter or intentionally files false information on any report required by this chapter is subject to a civil fine of not more than one thousand dollars.

Section 23. That § 47-9A-21 be amended to read as follows:



1        47-9A-21. If the attorney general has reason to believe that a ~~corporation~~ limited liability  
2 entity is in violation of this chapter, ~~he~~ the attorney general shall commence an action in the  
3 circuit court for the county in which any agricultural lands relative to such violation are situated,  
4 or if situated in two or more counties, in any county in which a substantial part of the lands are  
5 situated. If the court finds that the lands in question are being held in violation of this chapter,  
6 it shall enter an order so declaring.

7        Section 24. That § 47-9A-22 be amended to read as follows:

8        47-9A-22. The attorney general shall file any order under § 47-9A-21 for record with the  
9 register of deeds of each county in which any portion of ~~said~~ the lands are located. Thereafter,  
10 the ~~corporation~~ limited liability entity owning such land shall have a period of five years from the  
11 date of such order to divest itself of such lands. The ~~aforementioned~~ five-year limitation period  
12 shall be deemed a covenant running with the title to the land against any corporate grantee or  
13 assignee or the successor of such ~~corporation~~ entity. Any lands not so divested within the time  
14 prescribed shall be sold at public sale in the manner prescribed by order of the court.

15        Section 25. That § 47-9A-23 be amended to read as follows:

16        47-9A-23. This chapter shall be known and may be cited as the Family Farm Act ~~of 1974~~.

17        Section 26. The provisions of this Act become effective on July 1, 2002, if the electors of the  
18 State of South Dakota approve the repeal of sections 21, 22, 23, and 24 of Article XVII of the  
19 South Dakota Constitution at the June 2002, primary election.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

924H0422

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 157** - 02/05/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Vitter and Representative Derby

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning who may hold a light  
2 wine license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-4-2.2 be amended to read as follows:

5 35-4-2.2. A license authorized under subdivision 35-4-2(12) may only be issued to the owner  
6 or operator of a restaurant or a motel-hotel facility and shall permit the licensee to serve the  
7 enumerated beverages between 12:00 noon and 12:00 p.m. of each day of the week including  
8 Sunday. The term restaurant as used ~~herein shall mean~~ in this section means only a room  
9 regularly and in a bona fide manner used and kept open for the serving of meals to guests for  
10 compensation which has suitable table accommodations for at least fifty guests ~~therein~~ at one and  
11 the same time, and a connected kitchen ~~connected therewith~~ containing conveniences for cooking  
12 sufficient to provide meals in a bona fide manner for fifty guests at one and the same time. The  
13 term motel-hotel facility as used in this section means a facility used and kept open for the  
14 hosting of large groups of guests for compensation, which has at least seventy-five beds that are



1 suitable lodging accommodations.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

636H0699

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 158** - 02/06/2002

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senator Dennert

1 FOR AN ACT ENTITLED, An Act to clarify the calculation of state aid to education to certain  
2 school districts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The secretary of the Department of Education and Cultural Affairs shall  
5 promulgate rules, pursuant to chapter 1-26, that calculate exclusions for revenue received from  
6 opting out of the property tax limitations such that all expenditures shall be credited to formula  
7 revenue and unreserved general fund balance from the preceding fiscal year prior to any credits  
8 against opt-out revenue.



# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

933H0493

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 168** - 02/05/2002

Introduced by: Senator Greenfield and Representative Begalka

1 FOR AN ACT ENTITLED, An Act to permit certain nonprofits to have a temporary on-sale  
2 license.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of §§ 35-4-11 and 35-4-19, any municipality may issue a  
7 special events temporary on-sale license in addition to any other licenses held by the special  
8 events license applicant, if the licensee is recognized as an exempt organization under section  
9 501(c)(19) of the United States Internal Revenue Code, as amended, and in effect on January 1,  
10 2002, and the licensee holds a license within the municipality pursuant to subdivision 35-4-2(16).  
11 No public hearing is required for the issuance of a license pursuant to this section if the individual  
12 applying for the license holds an alcoholic beverage license in the municipality or holds an  
13 operating agreement for a municipal alcoholic beverage license. Any license issued pursuant to  
14 this section may be issued for a period of time, not to exceed two consecutive days, established  
15 by the municipal governing body.



1       Section 2. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Any license issued pursuant to section 1 of this Act shall be issued to the person and location  
4 specified on the application and the licensee shall comply with the provisions of § 35-4-60.  
5 However, if such license is issued in a municipality which holds a license pursuant to subdivision  
6 35-4-2(5), the licensee may only dispense alcoholic beverages obtained through the municipal  
7 off-sale establishment. Notwithstanding § 35-5-21.1, the fee provided for in this section shall be  
8 retained by the municipal governing body issuing such license. Each application shall be  
9 accompanied by the fee prior to consideration by the municipal governing body.

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

363H0702

## SENATE ENGROSSED NO. **SB 179** - 02/07/2002

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Symens and Diedrich (Larry) and Representatives Jaspers and Burg

1 FOR AN ACT ENTITLED, An Act to regulate sampling procedures for verification of  
2 transgenic seed use.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Farmer," the person responsible for planting a crop on, managing the crop, and  
6 harvesting the crop from land on which a patent infringement is alleged to have  
7 occurred; and

8 (2) "Transgenic organism," an organism that has been modified by genetic engineering to  
9 contain DNA from an outside source.

10 Section 2. Before a person holding a patent on transgenic seed may enter upon any land  
11 farmed by another for the purpose of obtaining crop samples to determine whether patent  
12 infringement has occurred, the person holding the patent:

13 (1) Shall notify the farmer in writing of the allegation that a patent infringement has  
14 occurred and request written permission to enter upon the farmer's land; and

15 (2) Shall obtain the written permission of the farmer.



1       The farmer shall grant or deny access within seven days of receipt of request to enter the  
2       land. If the farmer withholds written permission, the person holding a patent may petition the  
3       circuit court for an order granting permission to enter upon the farmer's land.

4       Section 3. If either party requests the secretary of agriculture to provide for the collection  
5       of samples under section 2 of this Act, or to participate in or conduct any other aspect of the  
6       sampling or analysis process, the secretary shall designate an employee or enter into an  
7       agreement with a person or entity to implement the specified activity as provided in rules under  
8       section 6 of this Act. The person or entity may be, but is not required to be, an employee or  
9       agency of the State of South Dakota. The patent holder shall pay the fee charged by the  
10      department under rules promulgated pursuant to section 6 of this Act. The farmer and the person  
11      holding the patent may each be present at any collection of samples conducted under this Act,  
12      and each shall be notified of the time and location of the sample taking in a timely manner.

13      Section 4. If the person holding a patent believes that the crop from which samples are to be  
14      taken may be subject to intentional damage or destruction, the person may seek a protection  
15      order from the circuit court. The protection order may not interrupt or interfere with normal  
16      farming practices, including harvest and tillage.

17      Section 5. The samples may be taken from a standing crop, from representative standing  
18      plants in the field, or from crops remaining in the field after harvest.

19      Section 6. The secretary of agriculture may promulgate rules, pursuant to chapter 1-26, to  
20      determine the following sampling protocols:

- 21      (1)   To determine who is authorized to collect samples or conduct related activity;
- 22      (2)   To determine methods of sample storage;
- 23      (3)   To establish standards for sampling, inspecting, analyzing, and testing seeds; and
- 24      (4)   To implement fees to recover sampling and related costs.



1       Section 7. The results of any testing conducted under this Act shall be sent by registered  
2   letter to either party by the other within thirty days after the results are reported from the testing  
3   laboratory.